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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,870	08/20/2001	Bernard William Kluesener	7441	5609

27752 7590 10/06/2003

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INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/913,870

Applicant(s)

KLUESENER ET AL.

Examiner

Brian P Mruk

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 11-23 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 11-23 and 25-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed July 29, 2003. Applicant has amended claims 1, 15-19, 27-28, and 31. Claim 24 has been cancelled. Currently, claims 1, 11-23 and 25-33 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 6.
3. The objection of the specification for not containing an abstract of the disclosure is withdrawn in view of applicant's amendment and remarks. Specifically, applicant has amended the instant specification to include an abstract of the disclosure.
4. The objection of claims 19 and 28 is withdrawn in view of applicant's amendment and remarks.
5. The rejection of claims 15-18, 27-28, and 31 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendment and remarks.
6. The rejection of claims 1, 11-20, 22-23 and 25-33 under 35 U.S.C. 102(a) as being anticipated by Scheper et al, WO 99/06466, is maintained for the reasons of record.

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7. The rejection of claims 1 and 11-33 under 35 U.S.C. 102(a) as being anticipated by Chatterjee et al, WO 98/11186, is withdrawn in view of applicant's amendment and remarks.

8. The rejection of claims 1, 11-19, 23 and 31-33 under 35 U.S.C. 102(b) as being anticipated by Lentsch et al, WO 95/34633, is maintained for the reasons of record.

9. The rejection of claims 1 and 11-33 under 35 U.S.C. 102(e) as being anticipated by Chatterjee et al, U.S. Patent No. 5,967,157, is withdrawn in view of applicant's amendment and remarks.

10. The rejection of claims 1 and 11-33 under 35 U.S.C. 102(e) as being anticipated by Chatterjee et al, U.S. Patent No. 5,912,218, is withdrawn in view of applicant's amendment and remarks.

## **NEW GROUNDS OF REJECTION**

### ***Double Patenting***

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1, 11-23 and 25-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-55 of copending Application No. 09/913,871. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 11-23 and 25-33 of the instant application and claims 14-55 of copending Application No. 09/913,871 claim a similar automatic dishwashing detergent composition comprising 5-90% by weight of a builder, 0.1-15% by weight of a similar nonionic surfactant component (see nonionic surfactant formula (ii) in both applications), and adjunct ingredients, such as bleaches, catalysts, and enzymes (see claims 14-55 of copending Application No. 09/913,871). Therefore, claims 1, 11-23 and 25-33 of the instant application are an obvious formulation in view of claims 14-55 of copending Application No. 09/913,871.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***R sponse to Arguments***

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13. Applicant's arguments filed July 29, 2003 have been fully considered but they are not persuasive.

Applicant argues that Scheper et al, WO 99/06466, does not teach the nonionic surfactant required in the instant invention. Specifically, applicant argues that the presently claimed nonionic surfactant does not comprise a  $\text{CH}(\text{OH})[\text{CH}_2]_j$  moiety, as required by Scheper et al, WO 99/06466. However, the examiner respectfully asserts that the nonionic surfactant component in Example 8 of Scheper et al, WO 99/06466, meets the formula (ii) nonionic surfactant limitation of the instant invention. Specifically, note that the ether-capped poly(oxyalkylated) alcohol of Example 6 meets the limitations required by applicant in the nonionic surfactant of formula (ii) in instant claim 1. Furthermore, the examiner respectfully asserts that the other nonionic surfactant in Example 8 of Scheper et al, WO 99/06466, (i.e. Tergitol 15S9) contains the  $\text{CH}(\text{OH})[\text{CH}_2]_j$  moiety.

Applicant argues that Lentsch et al, WO 95/34633, does not disclose a composition that contains a bleaching agent, as required by applicant in the instant invention. However, the examiner respectfully asserts that the bleaching agent is optional in independent claim 1 of the instant invention. Thus, since the bleaching agent is not required in the instant invention, the examiner maintains that Lentsch et al, WO 95/34633, anticipates the instant claims.

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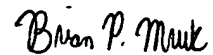
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Brian Mruk  
September 26, 2003



Brian P. Mruk  
Patent Examiner  
Tech Center 1700